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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/811,091 | 03/26/2004 | Neil Rapaport | 52193/DRK/R625 | 9739 |
| 23363 | 7590 | 01/09/2006 | | |
| CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068 | | | EXAMINER LOCKETT, KIMBERLY R | |
| | | | ART UNIT 2837 | PAPER NUMBER |

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/811,091 | Applicant(s) RAPAPORT, NEIL | |
| | Examiner Kim R. Lockett | Art Unit 2837 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2, 6,7,8, 17, 11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindley et al in view of Byers.

Lindley et al discloses the use of a snap away musical instrument pick, comprising: a sheet of material with at least one musical instrument pick formed therein by at least one cut line around a portion of the pick, with at least one uncut area around the at least one pick defining a single web-gap line joining the at least one musical instrument pick to a flat elongate card body outside of the at least one cut line, wherein the pick can be detached from the card body by severing the webs. Lindley further discloses the use of a plurality of picks that have the same size and shape (see figures 1-4).

Lindley does not disclose the specific use of a carrier with an aperture for carrying the pick.

Byers discloses the use of a plastic card carrier with an aperture for carrying the pick (see figure 1b; column 4, lines 10-15) for carrying the body on another structure (see figure 6).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Lindley with the aperture as disclosed by Byers in order to provide a convenient means for carrying a pick.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2, 6, 11, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindley et al in view of Byers in view of Savage.

Lindley and Byers do not disclose the specific use of plastic.

Savage discloses a method of making a pick by a punching out means using plastic material to form a specific size and shape (page 1, lines 31-35 & lines 6-11).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device as disclosed by Lindley to include the aperture as disclosed by Byers and with the plastic material as disclosed by Savage in order to provide a carry means for a pick with high strength capabilities.

5. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindley et al in view of Byers and Chance et al.

Lindley and Jackson do not disclose the use of die cutting.

Chance et al discloses the use of a pick made from die cutting (column 2, lines 36-50).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pick as disclosed by Lindley with the aperture as disclosed by Byers and the die cuttings as disclosed by Chance et al in order to provide an efficient way of fabricating and manufacturing a pick.

6. Claims 7, 8, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindley et al in view of Jackson, Savage, and Byers.

Lindley, Byers, and Savage do not disclose the use of an aperture.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pick as disclosed by Lindley with the aperture as disclosed by Byers, the plastic material as disclosed by Savage and the aperture as disclosed by Byers in order to provide an attachment means for a pick.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lindley et al in view of Byers and Everly.

Lindley does not disclose the specific use of a pick that bears geographical images.

Everly discloses the use of a pick that bears geographical images (see figures 1-7).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the pick as disclosed by Lindley with the geographical images in order to provide a pick with a variance of break away points.

Response to Arguments

8. Applicant's arguments filed 10/24/05 have been fully considered but they are not persuasive. The applicant argues that the pick holder and the pick are a separate structure. However the applicant's claims recite a sheet of material that carries a pick and an aperture in the carrier. Lindley et al discloses the use of a snap away musical instrument pick, comprising: a sheet of material with at least one musical instrument pick formed therein by at least one cut line around a portion of the pick, with at least one uncut area around the at least one pick defining a single web-gap line joining the at least one musical instrument pick to a flat elongate card body outside of the at least one cut line, wherein the pick can be detached from the card body by severing the webs. Lindley further discloses the use of a plurality of picks that have the same size and shape (see figures 1-4). Byers discloses the use of a plastic card carrier with an aperture for carrying the pick (see figure 1b; column 4, lines 10-15) for carrying the body on another structure (see figure 6). Therefore it would have been obvious to one of ordinary skill in the art to provide a carrier with an aperture in order to store, protect, and dispenses one or more picks (Byers, column 1, lines 55-60).

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


10. Papers related to this application may be submitted to Group 2800 by facsimile transmission. Papers should be faxed to Group 2800 via the PTO 2800 Fax Center at 703-872-9306.

For assistance in **Patent procedure, fees or general Patent questions** calls should be directed to the **Patents Assistance Center (PAC)** whose telephone number is **800-786-9199**. Assistance is also available on the Internet at www.uspto.gov.

Art Unit: 2837

Any inquiry concerning **this communication or earlier communications from the examiner** should be directed to **Kim Lockett** whose telephone number is **(703) 308-7615, after 2/3/04 my new number will be (571) 272-2067**. The examiner can normally be reached on Tuesday through Friday from 6:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107.



**KIMBERLY LOCKETT
PRIMARY EXAMINER**